STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

Implementation of Renewables Portfolio Standard Legislation (Public Utilities Code Sections 381, 383.5, 399.11 through 399.15, and 445); (SB 1038), (SB 1078)	**)**	**Docket No. 03-RPS-1078 RPS Proceeding**

COMMENTS REGARDING ELIGIBILITY OF OUT OF STATE POWER PROVIDERS UNDER THE CALIFORNIA RPS

Introduction and Statement of Position.

High Rock Holdings, LLC ("High Rock") is the developer of the Nevada Energy Park ("NEP") located approximately 60 miles north of Reno, Nevada, and 35 miles West of the California border. This Project encompasses over 10,000 acres of privately owned land. A sister corporation of High Rock Holdings, LLC (Empire Energy LLC) currently owns and operates on that land a 4.8 MW geothermal facility. In addition, the high voltage Pacific DC Intertie (PDCI) that is owned in part by California entities including the Los Angeles Department of Water and Power ("LADWP") and has reserved electric capacity by California investor-owned utilities, including Southern California Edison, traverses and bisects the Energy Park site.

It is the position of High Rock that any renewable energy resources developed in Nevada at or near the location of the proposed Nevada Energy Park and transmitted to California via either the PDCI or existing lines of Sierra Pacific Power Company, a California jurisdictional utility, should qualify under the provisions of SB 1078 and SB 1038 as eligible renewable energy resources. Geophysical and meteorological analysis to date indicates that there exists on or within proximity to the proposed Nevada Energy Park between 1,000 and 2,000 MWs of new

developable geothermal, wind, solar, and biomass energy resources that could generate clean renewable power to meet the California RPS requirements.

Background

The NEP is located in an area of Washoe County, Nevada approximately 60 miles North of Reno, just South of the town of Gerlich, Nevada and north of the Pyramid Lake Paiute Indian Reservation.

The NEP is approximately 35 miles from the California border. Within a 50 mile radius of the property, the Nevada Bureau of Mines and Geology have identified over 85 hot wells and hot springs that provide evidence of surface and sub-surface geothermal activity. There is currently a geothermal plant on the property that has been operating since 1987. Within a 60 mile radius of the property there are 5 other operating geothermal power plants. The total regional geothermal potential that could provide a baseload resource for California is estimated between 500 to 1,000 MWs of new resource capacity that could be developed.

In addition to the developable geothermal resources, studies have been conducted on areas within 50 miles of the property regarding potential wind resource development. These areas appear to contain wind resources in excess of 1,000 MWs. There also is substantial solar insulation in the region that could support electric generation from solar facilities, as well as the existence of pinion juniper that could support a biomass facility.

Aside from the natural renewable assets that exist at or near the NEP site, there is a substantial transmission line, largely owned and operated by California utilities, that bisects the property. This is the high voltage PDCI. It is a 3,200 MW capacity line that begins at Celilo in the Bonneville Power Administration service territory and terminates at Sylmar in the service territory of LADWP. Although the capacity on this line is fully subscribed, it is under-utilized

by as much as 1,000 to 2,000 MWs of unused capacity. Both California and Nevada entities have recognized the potential of this line via a third DC tap in Northern Nevada. Such a tap could provide substantial renewable energy resources to be delivered to California. In fact, the California State Energy Resources Conservation and Development Commission ("CEC") has awarded a consortium of public power providers in California a $5.8 Million PIER grant to study renewable issues regarding enhancement and augmentation of delivery of renewable energy to California. (See http://www.resource-solutions.org/PIER/PIERindex.htm) Part of that $5.8 Million is being utilized to study a third DC tap on the PDCI in Northern Nevada to be used for the purpose of a gathering point for geothermal and wind resources to be delivered to Sylmar in California. The Program sponsor is the CEC. The prime contractor is the San Francisco PUC/Hetch Hetchy. The program administrator is the Center for Resource Solutions. Thus, the CEC has recognized that Northern Nevada holds significant potential for renewable energy resource development and there exists in Northern Nevada a transmission line under the control of California utilities that could be utilized to deliver those renewable resources into California for use by California utilities.

Sierra Pacific Power Company ("SPPC"), a California jurisdictional utility under the California Public Utilities Commission ("CPUC") also is interested in collaborating in a third tap on the PDCI. Representatives of SPPC have met with the Program administrator for the PIER grant and have discussed the issue of using SPPC's Northern Nevada/California AC transmission system as a collection system for renewables to be put into the tap at the PDCI.

Aside from SPPC, the Pyramid Lake Paiute Tribe has entered into an agreement with a Northern Nevada geothermal developer, Advanced Thermal Systems, to develop geothermal resources on the Pyramid Lake Reservation. The reservation lies less than 20 miles south of the

NEP project side. The Tribe has expressed interest in the PDCI tap project being investigated by the CEC through their PIER grant.

Thus, there are substantial collaborative efforts among entities in California and Nevada to explore the development of Nevada renewable resources for delivery into California via California controlled transmission systems. It is within this context that the legislative language and intent of SB 1078 and SB 1038 is reviewed for the purpose of answering the question for the Commission as to whether renewable energy developed in the area near and contiguous with the PDCI line in Northern Nevada and transmitted to California via SPPC collector lines and a PDCI tap would qualify for certification as an eligible renewable resource under California law.

RENEWABLE ENERGY RESOURCES THAT ARE FED INTO THE PDCI IN NORTHERN NEVADA MEET THE DEFINITION OF "IN STATE RENEWABLE ELECTRICITY GENERATION TECHNOLOGY."

Section 399.12 of SB 1078 refers to an eligible renewable energy resource as an electric generating facility that "meets the definition of in-state renewable electricity generation technology" in Section 383.5. SB 1078, Section 399.12(a)(1.1). Section 383.5(b)(1) of SB 1038 defines "in-state renewable electricity generation technology" in pertinent subdivision (B) as follows:

> (B) The facility is located in the state or near the border of the state with the first point of connection to the Western Electricity Coordinating Council ("WECC") transmission system located within this state.

Certainly any renewable energy projects developed along the PDCI in Nevada are by definition "near the border of the state" in that the PDCI in Northern Nevada runs within 50 miles of the border of the state of California. A distance of 50 miles is the minimum that should be considered "near the border" in the western United States where transmission lines often run for hundreds of miles.

Secondly, SPPC is a CPUC jurisdictional utility and its WECC transmission system is, in fact, in part located within the State of California. As such, any interconnection into the SPPC's system would clearly meet the definitional requirements of Section 383.5(b)(1)(B) of a "first point of connection to the WECC within this state." A map of the SPPC service can be found at http://www.sierrapacific.com/company/territory/. Any connection of a renewable energy facility located on the near border between Nevada and California that interconnects with the SPPC system which is part of the Western Electric Coordinating Council transmission system ("WECC") located within the State of California and then connected to the PDCI, which is also part of the WECC system located within the State of California would qualify under the definition of a "In-state renewable electric generating technology" under Section 385.5(b)(1)(B).

IF THIS COMMISSION DETERMINES THAT SUCH RENEWABLE ENERGY RESOURCES DO NOT QUALIFY UNDER THE DEFINITION OF IN-STATE RENEWABLE ELECTRIC GENERATING TECHNOLOGY, THEN THE PROVISIONS OF SECTION 383.5(D)(2)(B) OF SB 1038 MUST APPLY.

If this Commission determines that those facilities interconnect with SPPC's California jurisdictional WECC transmission system and the PDCI or via SPPC's Althus intertie located within the State of California do not qualify as a "In-state Renewable Electric Generating Technology" then this Commission must find that those facilities qualify as eligible renewable energy resources under the provisions of Section 383.5(d)(2)(B) of SB 1038. That provision provides that the CEC may determine, as part of a solicitation, that a facility that does not meet the definition of a "In-state renewable electric generation technology" solely because it is located outside of the State, is eligible for funding under this subdivision if it meets both the following requirements:

I. It is located so that it is or will be connected to the Western Electricity Coordinating Council (WECC) transmission system.

II. It is developed with guaranteed contracts to sell its generation to end use customers subject to funding requirements of Section 381, or to marketers that provide this guarantee for resale of the generation, for a period of time at least equal to the amount of time it receives incentive payments under this subdivision.

So, according to the provisions of this Section, if the renewable facility is connected to any WECC line, whether it be considered in-state or not, and the power is sold to a California end user, then it is eligible for funding under Section 381 of the law.

There was some debate in the Workshop held by the Commission on March 25, 2003, as to whether or not qualification for funding would, in fact, mean that the facility was an eligible renewable energy resource under the provisions of Section 399.12 of SB 1078 and Section 383.5(b)(1)(B) of SB 1038. This question arose based upon the concern that just because a facility was eligible for funding, it didn't mean that it, in fact, met the definition of an "in-state renewable electric generation technology" facility. The conundrum that results if one interprets the law in a manner that allows for funding on the one hand, but does not allow for the facility to be eligible renewable energy resource on the other, is that no California jurisdictional utility will ever sign a contract with such an entity because it will not count towards that utility's renewable requirements under the law. Accordingly, these two provisions of these two statutes must be reconciled.

California law is clear that conflicting provisions of the law should be reads in a light so that any inconsistencies between them are harmonized. (See Piazza Properties Ltd. v. Department of Motor Vehicles (1977) 71 Cal. App. 3d 622, 633, 138 Cal. Rptr. 357). To say that a renewable energy facility on the near-border in Nevada that feeds into a WECC line of a California jurisdictional utility whose system is also partially located in California can receive funding, but cannot be eligible as a renewable energy resource does violence to the intent of the

statute. If the Commission does not read into the provisions of Section 385.5(d)(2)(B) an assumption of eligibility as long as criterias i and ii of Section 393.5(d)(2)(B) are met, then there would be no purpose to that Section of SB 1038.

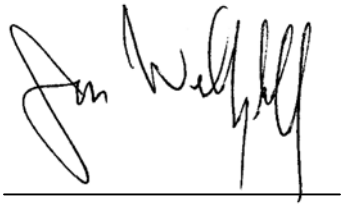
Courts in California have held that adding language during statutory interpretations as a matter of law is permissible where the court is convinced that the legislature, through inadvertence, failed to use or utilize words which give purpose to its pronouncements. (See People v. Buena Vista Mines, Inc., 56 Cal. Rptr. 2d 21, Cal. App. 2 Dist., 1996). The intent of the legislature is clearly ascertainable here in that the legislature could not have intended to provide a renewable facility with SEP funding without intending that facility also to be qualified as an eligible renewable energy resource under the law. The courts have stated in California that where words are inadvertently omitted from a statute, they may be supplied in the process of construction in order to effectuate the legislative intent. (See People v. Hernandez, 168 Cal. Rptr. 898; Cal. App. 2 Dist., 1980; People v. Medina, 93 Cal. Rptr. 560, Cal. App. 2 Dist., 1971; People v. Pallares, 246 P. 2d 173, Cal. Sup. (1952); People v. Heron, 90 P. 2d 154, Cal. Sup. App. (1939); Crawford v. Paine, 55 P. 2d 1240, Cal. App. 2 Dist., 1936).

Thus, to read the two statutory provisions consistently and to give meaning to both, this Commission must give effect to the legislature's intent to provide meaning to the section of law that gives the Commission the authority to provide funding to certain facilities if the conditions precedent in that section are met. In order to provide such meaning to Section 383.5(d)(2)(B) of SB 1038, this Commission must conclude that, in providing funding to such entities meeting the criteria of that section, that those facilities also, in fact, become eligible as a renewable energy resource under Section 399.12 of SB 1078.

Conclusion

There are substantial renewable energy resources (2000 MWs or greater) that have the potential to be developed in the near-border areas of Northern Nevada that can, via transmission lines that are currently part of the California in-state WECC system provide clean, green renewable energy to California to meet its legislatively mandate RPS requirements. This Commission can determine those facilities to be either "in-state renewable electric generation technology" under the law with an interpretation of the meaning of a WECC "first point of connection," or can determine them to so qualify by a reconciliation of the provisions of Section 383.5(d)(2)(B) of SB 1038 with Section 399.12 of SB 1078 to give meaning and purpose to all duly enacted provisions of the statute as required by substantial case law in the State of California. In either case, this Commission should find that such renewable energy facilities in Northern Nevada on the near California border should so qualify under the California RPS requirements and, therefore, be considered eligible technologies for purposes of the California RPS.

Dated: March 28, 2003



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